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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,750	01/21/2002	Morton M. Mower	2206-001 C	6121
7590	12/07/2005		EXAMINER	
Roberts Abokhair & Mardula, LLC Suite 1000 11800 Sunrise Valley Drive Reston, VA 20191			JASTRZAB, JEFFREY R	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/053,750	Applicant(s) MOWER, MORTON M.	
	Examiner Jeffrey R. Jastrzab	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-66 is/are pending in the application.
- 4a) Of the above claim(s) 10, 11 and 58-66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 12-57 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The amendment filed 5/15/02 stands objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is noted in the prior office action.

Applicants arguments have considered in depth, however, they are not deemed to be fully persuasive as follows:

As to the "not at every beat" limitation, Applicant's argue that one of ordinary skill would recognize that the mention of an atrial escape interval would provide support for the claims as written. This is not persuasive since the mere existence of an atrial escape interval does not require pacing "not operating at every beat". In patients where atrial paces are necessary at every beat, there would be no such pace skipping, which someone of ordinary skill in the art surely would recognize. As such, this rejection stands.

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As to the “oxygen consumption” limitation, the portions of the disclosure pointed out by Applicant do not directly address oxygen consumption, nor do they imply that oxygen is affected in any way. As such, this rejection stands.

As to the “reducing contraction force” limitation, the portions of the disclosure pointed out by Applicant do not directly address reduction at all, in fact these portions appear to address the opposite, i.e. enhanced contraction. As such, this rejection stands.

As to the “root locations” limitation, the portions of the disclosure pointed out by Applicant do not directly address root locations, while such a location may be encompassed by the teaching of the specification, no specific stimulation of a root location is addressed. As such, this rejection stands.

As to the “healing after infarct” limitation, the portions of the disclosure pointed out by Applicant do not directly address infarct, but instead address trauma which may be a genus for trauma, but the species remains unsupported. As such, this rejection stands.

As to the “HCM” limitation, the portions of the disclosure pointed out by Applicant do not directly address hypertrophic cardiomyopathy. While conduction disorders may be a genus for HCM, the species remains unsupported. As such, this rejection stands.

As to the “ischemia” limitation, the portions of the disclosure pointed out by Applicant do not directly address infarct, but instead address disease which may be a genus for ischemia, but the species remains unsupported. As such, this rejection stands.

Interference

The BPAI has declared that all applications yet to have an interference declared therein, need to be in compliance with the rule changes effective 9/13/04.

As such, Applicant needs to resubmit the Request of Interference in compliance with the new rules before an interference can be declared by the BPAI.

See Federal Register/ Vol. 69, No. 155/ Thursday, August 12, 2004/ Rules and Regulations. As an aside, Applicant should pay particular attention to 37 CFR 41.202 (4) in order to be fully compliant.

Allowable Subject Matter


All claims would be allowable if amended to overcome the 35 USC 112 first paragraph issues and will be forwarded to the BPAI upon compliance with the above rules changes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Jastrzab whose telephone number is (571) 272-4947. The examiner can normally be reached on M-W 5:30 a.m. to 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey R. Jastrzab
Primary Examiner
Art Unit 3762

12/2/05